



# THE ASSAM GAZETTE

অসাধাৰণ

EXTRAORDINARY

প্ৰাপ্ত কৰ্তৃত্ব দ্বাৰা প্ৰকাশিত

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GOVERNMENT OF ASSAM

ORDERS BY THE GOVERNOR

ASSAM LEGISLATIVE ASSEMBLY SECRETARIAT

## NOTIFICATION

The 4th January, 2025

**No. LLE 43/2022/19.-** The following decision of the Speaker, Assam Legislative Assembly given under Paragraph 6(1) of the Tenth Schedule to the Constitution of India is hereby notified and published:

### **DECISION OF THE SPEAKER, ASSAM LEGISLATIVE ASSEMBLY UNDER PARAGRAPH 6 (1) OF THE TENTH SCHEDULE TO THE CONSTITUTION OF INDIA**

#### **Disqualification Case No. ALA/DQC/15/2022/01**

Shri Debabrata Saikia, Leader,  
Assam Congress Legislature Party (ACLP)

-Versus- .....**Petitioner**

Shri Sherman Ali, MLA, No. 45 Bagbar LAC  
.....**Respondent**

#### **Principle of Natural Justice being followed :-**

From the record it appears that copy of the petition filed by the petitioner along with annexures has been furnished to the respondent. The respondent has filed their reply. The copy of the reply is also been

furnished to the petitioner. On 25/10/2024 the matter was posted for hearing both the sides. The matter was heard at length giving reasonable opportunities to both the sides and the case has been fixed for order.

The instant proceeding under Tenth Schedule of the Constitution of India has been initiated on the basis of a application filed by Shri Debabrata Saikia, Leader, Assam Congress Legislature Party (ACLP) under Article 191 (2) read with the Tenth Schedule of the Constitution of India seeking disqualification of the Member of Assam Legislative Assembly namely Shri Sherman Ali Ahmed who was elected as Member of Legislative Assembly from Baghbar Legislative Assembly Constituency, Assam. The said application is dated 26.04.2022 wherein in the aforesaid application prayer for disqualification of Shri Sherman Ali Ahmed from the Assam Legislative Assembly as per Article 191 (2) read with the Tenth Schedule of the Constitution of India.

**Maintainability :-**

The dispute between the parties is with regard to certain facts alleged by the applicant and the aforesaid facts are being specifically denied by the respondent. The respondent although has raised preliminary objection as to the maintainability of the application for violation of provision Rules 6 (5), 6 (5) (a), 6 (5) (b), 6 (6), 6 (7), 7 (1), 7 (2) and 7 (3) of the Members of Assam legislative Assembly (Disqualification on grounds of defection) Rules, 1986, but these are all mere irregularity. Both the parties are heard at length and both the parties are been given ample opportunities to project their case on the basis of records made available by them.

**The allegations made by the petitioner in his application :-**

In the said application the applicant namely Shri Debabrata Saikia stated that Shri Sherman Ali Ahmed was elected as an MLA of No. 45 Baghbar LAC on an Indian National Congress (INC) ticket.

It is further alleged that Shri Sherman Ali Ahmed having won the election under Indian National Congress (INC) ticket has been repeatedly and brazenly indulging in anti-Congress activities.

It is further alleged that Shri Sherman Ali Ahmed is already been suspended from Congress party for his abominably and communally provoking remarks.

It is further alleged that on 12/02/2022 Shri Sherman Ali Ahmed was witnessed coming out of BJP meeting venue at ITA Machkhowa. It is further alleged that initially Shri Sherman Ali Ahmed told that he came to meet a minister but later on he claimed that he was not there for meeting but only gone to toilet. A copy of the transliteration is annexed with the application which appears to be a document in the form of electronic record.

It is further alleged in the application that on 12/03/2022 Shri Sherman Ali Ahmed wrote a letter requesting to change his sitting arrangement from Congress block to AIUDF block. In the application although it has been mentioned about the copy of letter dated 12/03/2022 is annexed in the application but on verification of the application no such letter appears to be enclosed.

It is further alleged that Shri Sherman Ali Ahmed kept his anti-party activities and on 13/04/2022 he addressed a press conference and attacked Indian National Congress (INC) Party. In a series of allegations been levelled in the application and to support the same it has been referred in the application about a web-link dated 13/04/2022.

It is further alleged in the application that it is stated that there exist irrefutable evidence from where it can be safely inferred that conduct of Shri Sherman Ali Ahmed reflects that he has voluntarily given up the membership of the party. In the said application it is also alleged that Shri Sherman Ali Ahmed because of his anti-party actions amounts to voluntarily giving up the membership of the party.

The applicant relies on the Supreme Court Judgment reported in AIR 1994 SC 1558. In the said application the provision of Tenth Schedule has been narrated and the applicant also relied on Supreme Court judgment reported in AIR 1990 SC 1060. Finally the applicant prayed for disqualification of Shri Sherman Ali Ahmed from the Assam Legislative Assembly under Paragraph (2), Sub Paragraph (1) Clause (a) of the Tenth Schedule of the Constitution of India read with Article 191 (2) of the Constitution of India.

**The response of the respondent :-**

On receipt of the aforesaid application dated 26/04/2022 show cause notice was issued vide show cause notice dated 02/06/2022 vide communication no. LLE.43/2022/182 to Shri Sherman Ali Ahmed, Member of Assam Legislative Assembly no. 45 Baghbar LAC.

Shri Sherman Ali Ahmed on receipt of the notice filed a written reply which has been received on 24/06/2022 wherein he raised preliminary objection against the application filed by the applicant. In his objection he prayed for dismissal of the application for violation of the provision of Rule 6 (5) of the Members of Assam Legislative Assembly (Disqualification on grounds of defection) Rules, 1986. Further he raised objection as per Rules 6 (5) (a), 6 (5) (b) as well as the Rules 6 (6), 6 (7), 7 (1), 7 (2) and 7 (3) of the Members of Assam legislative Assembly (Disqualification on grounds of defection) Rules, 1986.

Further Shri Sherman Ali Ahmed in his written reply has alleged that he have not received the video footage of his alleged press conference on 13/04/2022 as well as video footage of his alleged presence on 12/02/2022 at Machkhowa. It is been further alleged by him that the said footage and video is not been certified by the

competent person cannot be looked into and he denies the correctness of the same.

Shri Sherman Ali Ahmed further specifically stated in his written reply that he entered the premises for using the toilet at ITA, Machkhowa. Further he denies the allegation of writing a letter to change his sitting arrangement. Further according to him the press conference dated 13/04/2022 even assuming to be true cannot be construed that inference can be drawn from the press conference that he has voluntarily given up the Indian National Congress (INC) Party.

Shri Sherman Ali Ahmed further in his reply stated that in the recently concluded Rajya Sabha election held on 31/03/2022, he was one of the proposers of the official candidate of Indian National Congress (INC) and that he voted for him. He further stated that he never violated the Party Whip. He has annexed the Party Whip along with his reply.

Shri Sherman Ali Ahmed in his reply stated that the judgment reported in AIR 1994 SC 1558 is not applicable on the factual matrix of his case. Further in his reply he has stated that he has never indulged in any kind of activities and contrary to it he supported his party during the Rajya Sabha election.

Shri Sherman Ali Ahmed in his reply prayed for dismissal of the application dated 26/04/2022 filed by Mr Debabrata Saikia.

**Right to freedom of speech and expression guaranteed under Article 19 (1)(a) of the Constitution of India :-**

Right to freedom of speech and expression is a fundamental right guaranteed to each citizen of India. The Right to freedom of speech and expression and the Right to dissent is also a part of Article 19(1)(a) of

the Constitution of India. Right to dissent is a facet under the Right to freedom of speech and expression which is also guaranteed under Article 19 (1)(a) of the Constitution of India. The word dissent means having or expressing opinions that are different from those that are officially accepted. Right to freedom of speech and expression is considered as an essential fundamental right under the democratic system of government. Article 19 (1) (a) of the Constitution of India recognise this as fundamental. The fundamental right to freedom of speech and expression is nothing but negative duty imposed upon the State under Article 19(1)(a) of the Constitution of India. Liberty and freedom are defining values of our Constitution and they should have the freedom guaranteed by the Constitution. Right to freedom of speech and expression and Right to dissent is part and parcel of Article 19 (1)(a) of the Constitution of India.

In India being a democratic nation right to dissent and expressing ones view to any decision of the Government or otherwise any action taken by the Government or policy of any political party would cover under right to freedom of speech and expression guaranteed under the Constitution of India.

**Decision :-**

The instant matter regarding disqualification of Shri Sherman Ali Ahmed was fixed on 25/10/2024 for final hearing and both the parties were duly informed.

During the course of hearing on 25/10/2024 regarding disqualification of Shri Sherman Ali Ahmed, the applicant was personally present with the learned Counsel Aman Wahid and the respondent namely Shri Sherman Ali Ahmed was personally present along with his learned Counsel namely Santanu Barthakur.



I have heard the Counsels for both the sides and have taken note of the argument advanced by the learned Counsels for both the sides. I have also perused the materials on record. I have examined the materials on record. I have also gone through the Judgments of the Apex Court relied by both the parties.

The main ground for filing the application for disqualification is on the basis of some events from where the applicant tried to demonstrate from the events alleged in the application that an inference can be drawn that the respondent namely Shri Sherman Ali Ahmed has voluntarily given up the membership of Indian National Congress (INC) Party. On the other hand the respondent specifically denied all the allegations and given explanation to each and every allegations. The respondent have replied that he have not done anything from where an inference can be drawn that he has given up voluntarily the membership of Indian National Congress (INC) Party. The respondent in his reply to the allegation to the applicant that he visited ITA, Machkhowa where BJP was having its meeting, the respondent stated that he went to ITA, Machkhow for using the toilet and not for any other purpose. There is nothing on record brought by the applicant to disbelieve the explanation given by the respondent in the instant case.

That the respondent to the allegation made by the applicant with regard to calling of a press conference by him on 13/04/2022 wherein he attacked Indian National Congress (INC) Party in the press conference. The respondent to the said allegation have made a categorical statement in his reply that the contents of the press conference has not been supplied to him. Further he has replied that honest criticism of anything done by any Government at any point of time cannot be construed as an act from where inference can be drawn

that the respondent has voluntarily given up Indian National Congress (INC) Party.

On this point I have perused the application as well as all the records the applicant has not made available any electronic record in the form of a document, mere making of statements in an application about an electronic record without making the said electronic record available cannot be accepted. Furthermore in a democratic country, every citizen as well as every members of any political party may criticise or support any Government policies in their individual capacity and such right has been guaranteed under the Constitution of India. No inference whatsoever can be drawn from such act of an individual which would give rise to an inference that the said person has voluntarily given up the membership of a political party.

In the application it is further alleged that Shri Sherman Ali Ahmed made abominable and communally provocative remark for which he was suspended. To the said allegation the respondent did not reply to the said allegations.

I have applied my mind to the said allegations which is not supported by any materials on record. Any statement made by any person at any point of time whether amounts to abominable and communally provocative remarks can be only decided when such materials are produced. Further, suspension of a member of a party is an internal matter of a political party for which no inference can be drawn that person concerned has voluntarily given the membership of a political party.

In the application by the applicant it has been alleged that the respondent wrote a letter for changing of his seat arrangement from the



Congress block to AIUDF block, although in the application it has been mentioned that the copy of the letter dated 12/03/2022 is annexed and marked as Annexure - B but no such document has been found annexed with the application. The applicant during the course of hearing produced the letter dated 12/03/2022 under Memo No. 45/D-ALA-Part-II/11/2021-22. During the course of hearing the Respondent also produced another letter dated 12/03/2022 under Memo No. 45/D-ALA-Part-II/11/2021-22/A wherein it has been stated that his earlier letter dated 12-03/2022 has typographical error and prayer has been made to rectify the same. Considering the aforesaid 2 letters produced by the applicant as well as the respondent and as well as considering the fact that in the last Rajya Sabha Election held on 31/03/2022, the Respondent was the proposer of Indian National Congress (INC) candidate and he also voted for INC candidate in compliance with the whip issued by INC, it appears that the stand taken by the applicant on the basis of a letter which suffers from typographical error and which has been rectified on the same day and as such the respondent can not be disqualified on the basis of aforesaid typographical error invoking the power as provided in the 10<sup>th</sup> Schedule para 2 (1) (a) of the Constitution of India.

The applicant to support his application relied on a judgment of Apex Court reported in AIR 1994 SC 1558 as well as another judgment of Apex Court reported in AIR 1990 SC 1060.

I have the opportunity to go through the facts of the two reported cases. Every case has its own facts, the facts of the instant case are totally different and as such facts are distinguishable. The ratio laid down in the aforesaid judgments is not applicable in the facts of the present case. Here in this case, as it appears that Shri Sherman Ali

Ahmed inspite of being a suspended member of Indian National Congress (INC) was the proposer of the Indian National Congress (INC) candidate for Rajya Sabha election and he voted for the Rajya sabha candidate of Indian National Congress (INC) on the basis of Three Line Whip dated 29/03/2022 issued by Chief Whip of Congress Legislature Party, Assam. Accordingly on appreciation of all materials on record considering the ratio laid down by the Supreme Court in *Kihoto Hollohan* I hold that on the facts of the instant case no inference can be drawn that the respondent have voluntarily given up the membership of Indian National Congress (INC) Party. As stated herein above I hold that the application filed by the applicant is deserved to be dismissed. The respondent cannot be disqualified from being a member of Assam Legislative Assembly under the provision of the Tenth Schedule of the Constitution of India. The application filed by the applicant has no merit and is hereby dismissed.

**Dispur;**  
**Dated the 4th January, 2025**

**BISWAJIT DAIMARY,**  
Speaker,  
Assam Legislative Assembly.

(By order etc.)

**D. PEGU,**  
Secretary,  
Assam Legislative Assembly.